



OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN

GROVER SELLERS
ATTORNEY GENERAL

Honorable John R. Shook
Criminal District Attorney
Bexar County
San Antonio, Texas

Opinion No. 0-6081
Re: Maximum compensation for
contracts authorized by
Arts. 7335, 7335a, 7335b,
and 7264a, V. A. C. S.

We have received your recent communication in which
you ask the following questions:

"1. What is the maximum compensation that
the Commissioners' Court can agree to pay to
competent persons to install Block Books and
Maps, or a tax or plat system?

"2. What is the maximum compensation that
the Commissioners' Court can agree to pay attor-
neys for the collection of delinquent taxes?

"3. What is the maximum compensation that
the Commissioners' Court can agree to pay to
competent persons to modernize the existing Block
Book and Map System of the County, and also to
enforce the collection of delinquent taxes, which
would necessitate the employment of counsel?"

Article 7335, Vernon's Annotated Civil Statutes,
provides as follows:

"Whenever the commissioners court of any county
after thirty days written notice to the county attor-
ney or district attorney to file delinquent tax suits
and his failure to do so, shall deem it necessary or

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expedient, said court may contract with any competent attorney to enforce or assist in the enforcement of the collection of any delinquent State and county taxes for a per cent on the taxes, penalty and interest actually collected, and said court is further authorized to pay for an abstract of property assessed or unknown and unrendered from the taxes, interest and penalty to be collected on such lands, but all such payment and expenses shall be contingent upon the collection of such taxes, penalty and interest. It shall be the duty of the county attorney, or of the district attorney, where there is no county attorney, to actively assist any person with whom such contract is made, by filing and pushing to a speedy conclusion all suits for collection of delinquent taxes, under any contract made as herein above specified; provided, that where any district or county attorney shall fail or refuse to file and prosecute such suits in good faith, he shall not be entitled to any fees therefrom, but such fees shall nevertheless be collected as a part of the costs of suit and applied on the payment of the compensation allowed the attorney prosecuting the suit, and the attorney with whom such contract has been made is hereby fully empowered and authorized to proceed in such suits without the joinder and assistance of said county or district attorneys. Acts 2nd C. S., 1923, p. 37; Acts 3rd C. S. 1923, p. 182."

Article 7335a, V. A. C. S., provides as follows:

"Sec. 1. No contract shall be made or entered into by the Commissioners' Court in connection with the collection of delinquent taxes where the compensation under such contract is more than fifteen per cent of the amount collected. Said contract must be approved by both the Comptroller and the Attorney General of the State

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of Texas, both as to substance and form. Provided however the County or District Attorney shall not receive any compensation for any services he may render in connection with the performance of the contract or the taxes collected thereunder.

"Sec. 2. Any contract made in violation of this Act shall be void. Acts 1930, 41st Leg., 4th C. S., p. 9, ch. 8."

Article 7344, V. A. C. S., provides as follows:

"In counties in which the subdivisions of surveys are not regularly numbered, and in cities or towns in which the blocks or subdivisions are not numbered, or are so irregularly numbered as to make it difficult or impossible for the assessor to list the same, the commissioners court of such counties may have all the blocks and subdivisions of surveys platted and numbered so as to identify each lot or tract, and furnish the assessor with maps showing such numbering; and an assessment of any property by such numbering on said maps shall be sufficient description thereof for all purposes. Such maps or a certified copy of same or any part thereof, shall be admissible as evidence in all courts. The cost of making said survey and plats shall be defrayed by the county in which said property is situated, and of which said commissioners court ordered the said surveys and plat made and the cost of any map of a town or city shall be paid by such city or town when ordered by the town or city. Acts 1897, p. 139; C. L. Vol. 10, p. 1193."

Article 7264a, V. A. C. S., provides as follows:

"Sec. 1. It is hereby declared the Policy of the State to adjust delinquent taxes, correct errors, to eliminate conflicts in surveys of land, and to collect the delinquent, occupation, franchise and Ad Valorem Taxes, in order to clear this State of such taxes, errors and conflicts at the

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earliest date possible, and to provide a system for assessors, in order to eliminate the numerous errors that now appear on the tax rolls each recurring year.

"Sec. 2. Cost of collecting delinquent taxes shall not exceed the amount of the penalty and interest, or an amount equal to such penalty and interest of all delinquent taxes collected. Any county desiring to install a tax or plat system and clear the county of errors, conflicts and unknown owners, may do so by paying not to exceed 15% of the delinquent taxes collected, which payment shall cover the cost of records and installing same.

"Sec. 3. In order to speedily carry out the provisions of this Act, the State Comptroller and the Commissioners' Court of each of the several counties may employ competent persons to do the work and to furnish the Comptroller and the Commissioners' Court all cases where adjustment is necessary; and in all such cases the Commissioners' Court shall make proper settlement or adjustment.

"Sec. 4. This Act is not intended to change any law now in effect regarding the collection of delinquent taxes, but to be an aid to the officials in the discharge of their duties, and when the delinquent taxes in a county are adjusted, corrected and collected, the Comptroller shall take necessary steps to see that all delinquent taxes are collected within a reasonable time after they become delinquent, in order to avoid the necessity of again employing additional help. Acts 1931, 42nd Leg., p. 383, ch. 229."

In passing on the validity of a certain contract, the Galveston Court of Civil Appeals in the case of Marquart, et al, vs. Harris County, et al, 117 S. W. (2d) 494, (writ dismissed), said the following:

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"If, however, there be any doubt as to the applicability of Art. 7335a, which was passed in 1930, the companion Act, Art. 7264a, passed in 1931, apparently clears it up, the two being construable together, along with other laws relating to the assessment and collection of taxes;"

In the case of Mills-Dewitt Co., vs. Brazoria County, 142 S. W. (2d) 916, (writ ref.), where the contract in question was one calling for the installation of a complete plat book system for the county and to build certain maps, for a consideration of 33-1/3 per cent of all delinquent taxes collected during a certain time, the Galveston Court held as follows:

" . . . it expressly appears upon the face thereof that this was, plainly, a contract 'in connection with the collection of delinquent taxes', within the terms of Articles 7335a and 7264a, supra, hence the efforts . . . to resuscitate them - after they had so become functus officio by their own terms - were in direct contravention of the terms of those statutes, hence were abortive; . . . In that the express terms of cited Article 7335a render such efforts to waive the time of performance or renew the obligation after its expiration, void, on two counts: (a) The compensation was more than twice the 15% therein specified as a maximum charge, and (b) neither the Comptroller nor the Attorney General of the State had approved any of them; neither did subsequent R. S. Article 7264a retrieve this black-out for appellant in any respect, because, by its express terms, it was 'not intended to change any law now in effect regarding the collection of delinquent taxes'."

In the case of White vs. McGill, County Judge, et al, 114 S. W. (2d) 860, a suit involving a "tax ferret contract" in regard to personal property, the Supreme Court of Texas said:

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"In order to avoid the execution of contracts calling for excessive and unreasonable compensation, the Legislature enacted the foregoing articles, (Art. 7335a and Art. 7264a, V. A. C. S.) and limited the compensation to be paid thereunder to an amount not to exceed 15 per cent of the amount collected... Articles 7335 and 7344 form the basis to support the contracts upheld in the decisions above cited. (Eastwood v. Henderson County, 625 S.W. (2d) 65; Sylvan Sanders Company vs. Scurry County, 77 S.W. (2d) 709), executed prior to the enactment of articles 7264a and 7335a. Article 7344 refers to real estate and the method of its assessment. Article 7335 has been amended by adding Article 7335a thereto. . . Therefore we conclude that the contract involved here is governed by the provisions of Article 7335a."

From a study of the above authorities, together with other similar ones, we have become convinced that the appellate courts of this State deem said articles 7335, 7344 and 7264a, all, as being "in connection with the collection of delinquent taxes" and cumulative of each other, and, as such, being amenable to the provisions of Article 7335a, supra. This being so, we do not believe that the various methods of collecting taxes, or in aid thereof, enumerated in said statutes could be so split and separated from each other so as to allow the maximum 15% compensation for each of such methods, if more than one method is used for the same contract time. In other words, if only one method is desired, then the compensation for services rendered in pursuing that method should be commensurate with the value received but it could not be more than the 15% ceiling. If more than one method, or all methods, are used, in one or more contracts with the same or different persons, the ceiling for the entire work covered by such statutes could not exceed 15% of the amount collected thereunder for the period of time involved.

Therefore, in answer to your question No. 1, you are advised that any county desiring to install a tax or plat system and clear the county of errors, conflicts and unknown owners, may do so by paying not to exceed 15% of the delinquent taxes collected, which payment shall cover the cost of records and installing same.

Your question No. 2, we believe, is answered by the express provisions of Article 7335a, supra: ". . . fifteen per cent of the amount collected."

In regard to your question No. 3, we repeat that the maximum compensation for the entire work done under authority of Articles 7335, 7344 and 7264a, supra, could not exceed 15% of the amount collected thereunder for the period of time involved.

Trusting this fully answers your questions, we are

Very truly yours,

ATTORNEY GENERAL OF TEXAS

By *Robert L. Lattimore Jr.*
Robert L. Lattimore, Jr.
Assistant.

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Carlos Ashley
FIRST ASSISTANT
ATTORNEY GENERAL

